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March 23, 2007

BY CM/ECF and HAND DELIVERY

The Honorable Mary Pat Thyng
U.S. District Court for the District of Delaware
844 King Street
Wilmington, DE 19801

Re: Proposed Order to Compel Production: *McKesson Automation, Inc. v. Swisslog Italia S.P.A. et al.*; C.A. No. 06-028-MPT

Your Honor:

We write on behalf of plaintiff McKesson Automation ("McKesson") regarding Defendants' failure to comply with a document production required under the Scheduling Order, their failure to produce documents in accordance with a time extension agreed upon by the parties, and their subsequent refusal to provide a date certain when they will produce the required documents and any privilege log.

Specifically, the Scheduling Order required Defendants to produce on or before February 28, 2007 "any such opinion [of counsel it is relying on as a defense to willfulness], related documents, and/or privilege log to the extent one exists." (D.I. 87, ¶ 3 d.) Defendants failed to comply with the Scheduling Order. On February 28, 2007, Defendants produced only the opinions it is relying on and failed to produce any related documents. McKesson informed Defendants of this deficiency and requested production of all documents and any privilege log required by the Scheduling Order by March 16, 2007. Defendants agreed to provide all such documents by March 16. (See Exhibit 1, Mar. 6, 2007 email from P. Lambrianakos to C. Ondrick). Defendants then again failed to produce the documents. McKesson informed Defendants of this repeat failure and requested the documents by March 22, 2007. Defendants refused to agree to a particular production date. McKesson still has not received any such documents, nearly a month after the passing of the Court ordered production deadline and a week after the subsequently agreed upon production date.

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McKesson respectfully requests an Order from the Court compelling the production of all documents related to the same subject matter of the opinions Defendants are relying on as a defense to willful infringement and a privilege log, if any, by March 30, 2007.

Respectfully submitted,

A handwritten signature in black ink that reads "Dale Dube".

Dale R. Dube

No. 2863

DRD:pb

Enclosure

cc: Clerk of Court (by CM/ECF)
Julia Heaney, Esquire (by CM/ECF and hand delivery)
Lawrence C. Drucker, Esquire (by email and Federal Express)
Blair M. Jacobs, Esquire
Christina A. Ondrick, Esquire

SO ORDERED this _____ day of _____, 2007.

Hon. Mary Pat Thyngé

EXHIBIT 1

Vigue, Mary

From: Ondrick, Christina
Sent: Wednesday, March 21, 2007 9:04 AM
To: 'LaCava, Richard'; Lambrianakos, Peter; Drucker, Lawrence; Fabricant, Alfred
Cc: Jacobs, Blair
Subject: RE: McKesson v. Swisslog - Subpoenas & Opinions

Rich,

We disagree with your understanding of the agreement.

Regards,
Christina

From: LaCava, Richard [mailto:LaCavaR@ dicksteinshapiro.com]
Sent: Tuesday, March 20, 2007 7:01 PM
To: Ondrick, Christina; Lambrianakos, Peter; Drucker, Lawrence; Fabricant, Alfred
Cc: Jacobs, Blair
Subject: RE: McKesson v. Swisslog - Subpoenas & Opinions

Christina,

I need to correct my below e-mail. As I understand it, the agreement between Blair, Fred and Larry was that Steve Weisburd's deposition would be taken toward the end of fact discovery and Fred's deposition will not be taken until sometime *after* fact discovery ends, like after dispositive motions, if at all. Please confirm this with Blair and if accurate, we will accept service of the Dickstein and Weisburd subpoenas.

As I stated in my below e-mail, we will be producing the documents related to the opinion, and will begin sending you those documents shortly.

Regards,
Rich

From: Ondrick, Christina [mailto:Christina.Ondrick@sablaw.com]
Sent: Tuesday, March 20, 2007 6:22 PM
To: LaCava, Richard; Lambrianakos, Peter; Drucker, Lawrence; Fabricant, Alfred
Cc: Jacobs, Blair
Subject: RE: McKesson v. Swisslog - Subpoenas & Opinions

Rich,

We will be taking Mr. Weisburd at the end of June as July can get pretty hectic with the close of discovery. Your understanding with regard to Fred is correct. We will take Fred's deposition near the end of fact discovery, if at all. We are not serving a notice on Fred at this time. Will you be accepting service of the subpoenas on Dickstein and Mr. Weisburd?

With regard to the documents related to the opinions, please see the correspondence below. Defendants agreed to produce documents by March 16. Defendants let this deadline pass without requesting an extension or any comment. You now propose producing such documents at some indefinite time in the future. Defendants actions are unacceptable. Please produce these documents by March 22. If you do not, we unfortunately will be forced to file a motion to compel with the Court. Please confirm in writing when you will be producing the documents.

With regard to the privilege log, the parties never agreed upon a formal deadline for the exchange of privilege logs. We, however, will provide our privilege by the end of the week.

Regards,
Christina

From: LaCava, Richard [mailto:LaCavaR@ dicksteinshapiro.com]
Sent: Tuesday, March 20, 2007 5:52 PM
To: Ondrick, Christina; Lambrianakos, Peter; Drucker, Lawrence; Fabricant, Alfred
Cc: Jacobs, Blair
Subject: RE: McKesson v. Swisslog - Subpoenas & Opinions

Christina,

Thank you for the e-mail. As far as I understand the agreement between Blair, Larry and Fred, you will not be seeking to take the deposition of Mr. Weisburd until close to the end of discovery (i.e., sometime in July), and not take Fred's deposition until fact discovery ends, if you take his deposition at all. If this is your understanding as well, we have no problem accepting service for Dickstein and Mr. Weisburd.

With respect to the documents related to the opinion, we are currently gathering these documents from all parties and will send them to you shortly.

The March 16 Swisslog Italia documents do not include documents related to the opinions.

On another note, although the deadline has well since passed, we have not received your privilege log. Please send this to us by the end of this week.

Regards,
Rich

From: Ondrick, Christina [mailto:Christina.Ondrick@sablaw.com]
Sent: Tuesday, March 20, 2007 12:42 PM
To: LaCava, Richard; Lambrianakos, Peter; Drucker, Lawrence; Fabricant, Alfred
Cc: Jacobs, Blair
Subject: FW: McKesson v. Swisslog - Subpoenas & Opinions

Rich,

This email is to follow-up on my voicemails to you from yesterday and today.

I know that Blair, Larry and Fred discussed the subpoenas to Dickstein and Mr. Weisburd. Please confirm the you will be accepting service of those subpoenas. Also, based on our discussions and the email correspondence below, Defendants were to produce all documents related to the opinions it is relying on as a defense to willful infringement. Any documents that were not produced would be identified on a log. You indicated that you would produce all such documents from Defendants' and Dickstein's files by March 16 (docs were originally due Feb. 28 under the scheduling order). On March 16, we received another 50,000 pages of documents from Swisslog Italia. Do any of these documents include opinion related documents or does Swisslog

Italia still need to produce such documents? Also, we did not receive any such documents from Translogic or Dickstein or any privilege logs. Is this because no related documents exist?

Regards,
Christina

From: Lambrianakos, Peter [mailto:LambrianakosP@dicksteinshapiro.com]
Sent: Tuesday, March 06, 2007 9:58 PM
To: Ondrick, Christina
Cc: Jacobs, Blair; LaCava, Richard; Drucker, Lawrence; Fabricant, Alfred
Subject: RE: McKesson v. Swisslog - Opinions

Christina,

We certainly intend to produce these documents by March 16. Thanks.

Peter

From: Ondrick, Christina [mailto:Christina.Ondrick@sablaw.com]
Sent: Tuesday, March 06, 2007 7:18 PM
To: Lambrianakos, Peter
Cc: Jacobs, Blair; LaCava, Richard; Drucker, Lawrence; Fabricant, Alfred
Subject: RE: McKesson v. Swisslog - Opinions

Peter,

Please produce all such documents by March 16, 2006. If you do not produce the documents by this date, and do not have some extraordinary reason for your inability to provide these documents within this reasonable time frame, we will bring this matter to the Court's attention. Please confirm that you will produce all such documents by March 16.

Regards,
Christina

From: Lambrianakos, Peter [mailto:LambrianakosP@dicksteinshapiro.com]
Sent: Tuesday, March 06, 2007 7:01 PM
To: Ondrick, Christina
Cc: Jacobs, Blair; LaCava, Richard; Drucker, Lawrence; Fabricant, Alfred
Subject: RE: McKesson v. Swisslog - Opinions

Christina,

We are gathering the documents as to which privilege has been waived and will produce them as soon as we can process them. It was not our interpretation of the latest scheduling order that documents other than the opinions themselves, their supporting documents, and the privilege log were supposed to be turned over by February 28. In any event, we are moving quickly on the supplement to the production and will provide the documents shortly.

Best regards,

Peter

From: Ondrick, Christina [mailto:Christina.Ondrick@sablaw.com]
Sent: Friday, March 02, 2007 12:15 PM
To: Lambrianakos, Peter; LaCava, Richard; Drucker, Lawrence; Fabricant, Alfred
Cc: Jacobs, Blair
Subject: RE: McKesson v. Swisslog - Opinions

Peter,

Thank you for your email. Our agreement does not include documents created after the litigation for which privilege has been waived. Such waived documents include all documents that relate to the same subject matter as the opinions being relied upon regardless of date. You did not produce any such documents. Those documents must be produced immediately. Any such documents (again regardless of date) that you are not producing must be placed on a privilege log so that we can determine whether there is a valid basis for withholding or whether we need to bring a motion a to compel. Please produce all such documents by Tuesday, March 6. As you know, the Scheduling Order required Defendants to produce such documents back on Feb. 28.

Regards,
Christina

From: Lambrianakos, Peter [mailto:LambrianakosP@dicksteinshapiro.com]
Sent: Friday, March 02, 2007 11:52 AM
To: Ondrick, Christina; LaCava, Richard; Drucker, Lawrence; Fabricant, Alfred
Cc: Jacobs, Blair
Subject: RE: McKesson v. Swisslog - Opinions

Christina,

Defendants produced the four opinions because they are relying on those opinions. In accordance with the parties' agreement that privileged documents generated prior to the commencement of the litigation will be included on the privilege logs, all such documents are disclosed on the logs.

Regards,

Peter

From: Ondrick, Christina [mailto:Christina.Ondrick@sablaw.com]
Sent: Thursday, March 01, 2007 5:52 PM
To: Lambrianakos, Peter; LaCava, Richard; Drucker, Lawrence; Fabricant, Alfred
Cc: Jacobs, Blair
Subject: McKesson v. Swisslog - Opinions

Peter,

Defendants produced four opinion letters but failed to identify which opinions they are relying upon in accordance with paragraph 3(d) of the Scheduling Order. Please identify which opinions Defendants are relying on as part of a defense to McKesson's willful infringement claim. Please also confirm that Defendants have produced, or identified on the privilege logs, all documents that relate to the same subject matter as the opinions being relied

upon. Although disclosure of this information was required by February 28, please provide the requested information no later than close of business Friday, March 2. Otherwise, we will be forced to bring this matter to the magistrate's attention.

Regards,
Christina

Christina A. Ondrick, Esq.
Sutherland Asbill & Brennan LLP
1275 Pennsylvania Ave., N.W.
Washington, D.C. 20004
Direct: (202) 383-0819
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